



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[Docket No. EERE-2012-BT-TP-0003]

RIN: 1904-AC70

Amendments and Correction to Petitions for Waiver and Interim Waiver for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (“DOE” or the “Department”) proposes amendments and corrections to portions of its regulations governing petitions for waiver and interim waiver from DOE test procedures. In finalizing the March 7, 2011 final certification, compliance and enforcement rule for consumer products and commercial equipment, DOE inadvertently deleted language pertaining to petitions for waiver and interim waiver of DOE’s test procedure requirements for consumer products. This notice addresses that error by proposing to restore, with minor amendments, the omitted text. DOE also proposes a process by which, within 60 days after DOE grants a waiver for a product employing a particular technology, other manufacturers of that product employing a technology or characteristic that results in the same need for a waiver would submit a petition for waiver. This process would ensure that

manufacturers of similar products test and rate those products in a comparable manner. The proposed rule also sets forth a process for manufacturers to request rescission or modification of a waiver if they determine that the waiver is no longer needed, or for other appropriate reasons. DOE also proposes to make other minor modifications to the waiver provisions for both consumer products and commercial equipment and to clarify certain aspects related to the submission and processing of a waiver petition.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See section V, “Public Participation,” of this NOPR for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2010-BT-CE-0014, by any of the following methods:

- *E-mail:* Amendments-Correction-2012-TP-0003@ee.doe.gov. Include EERE-2012-BT-TP-0003 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Revisions to Energy Efficiency Enforcement Regulations, EERE-2012-BT-TP-0003, 1000 Independence Avenue, SW, Washington, D.C. 20585-0121. Phone: (202) 586-2945. Please submit one signed paper original.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW, Washington, DC 20024.

Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. Note that all comments received will be posted without change, including any personal information provided.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended, (“EPCA” or the “Act”) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, amended EPCA to add Part A-1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317)¹

This proposed rule involves the regulatory provisions governing the submission and processing of test procedure waivers for both consumer products under Part A of EPCA and commercial equipment under Part A-1. EPCA directs DOE to prescribe test procedures that are reasonably designed to produce results reflecting the energy efficiency, energy use, and estimated annual operating costs for those products, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3), 6314(a)(2). DOE’s regulations in Title 10 of the Code of Federal Regulations (CFR), Section 430.27 (consumer products) and Section 431.401 (commercial equipment) contain provisions allowing a person to seek a waiver from the test procedure requirements if certain conditions are met. A waiver allows manufacturers to use an alternative test procedure in situations where the DOE test procedure cannot be used to test the products or equipment, or where use of the DOE test procedure would provide unrepresentative results.

¹ For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A-1, respectively, in the United States Code.

II. Background

On March 7, 2011, DOE's Office of Energy Efficiency and Renewable Energy ("EERE") published a final rule titled "Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment." 76 FR 12421. Among other things, the rule added an electronic filing option for submitting petitions for waiver from the test procedure requirements for consumer products located at 10 CFR 430.27. Since the publication of this rule, it has come to the Department's attention that, due to a drafting oversight, certain parts of the existing regulatory text in 10 CFR 430.27 were inadvertently deleted by the rule. Consequently, the provisions formerly located at 10 CFR 430.27(b)(1)(i) through (iv), which address what must be included in a waiver petition for consumer products, no longer exist in the current regulatory text. This notice proposes to correct DOE's existing regulations in 10 CFR 430.27 by reinstating paragraphs (b)(1)(i) through (iv) in 10 CFR 430.27, with minor amendments to paragraph (iii). DOE also proposes a process by which, within 60 days after DOE grants a waiver for a product employing a particular technology, other manufacturers of that product employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the Federal Register, would submit a petition for waiver. (Some recent examples of technologies or characteristics for which multiple manufacturers had the same need for a waiver include large-capacity clothes washers, refrigerator-freezers that employ multiple defrost cycles, and dishwashers with a water softener regeneration system.) This process would ensure that manufacturers of similar products test and rate those products in a comparable manner. The proposed rule also sets forth a process for manufacturers to request rescission or modification of a waiver if they determine that the waiver is no longer needed, or for other appropriate reasons.

DOE also proposes to make other minor amendments to its waiver provisions in 10 CFR parts 430 and 431, which include clarifying manufacturer responsibility under the rules and making clear that manufacturers of all types of covered commercial and industrial equipment are eligible to petition for waiver. The proposals are described in more detail in the following section.

III. Discussion of Specific Revisions to Waiver Provisions

In this proposed rule, DOE proposes to add an introductory paragraph to paragraphs 430.27(a) and 431.401(a) to clarify that obtaining a waiver or interim waiver does not exempt a manufacturer of consumer products or commercial equipment from compliance with any other applicable regulatory requirements contained in 10 CFR parts 430 and 431, or the certification and compliance requirements of 10 CFR part 429. DOE believes this new language will make clear that a waiver is solely an authorization to use an alternative test procedure method, and does not relieve the manufacturer from any other regulatory requirements.

With regard to waiver applications for commercial equipment addressed in part 431, DOE is proposing to modify section 431.401(a)(1) to expand the waiver provisions to apply to manufacturers of all types of covered commercial and industrial equipment, rather than just the five types of equipment referenced in the current regulations (i.e., commercial warm air furnaces; commercial packaged boilers; small, large, and very large commercial package air conditioning and heating equipment; packaged terminal air conditioners and packaged terminal heat pumps; and commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters)). This change will ensure that the waiver provisions are available to manufacturers of all commercial equipment types, not limited to only certain equipment types.

As a related action, DOE is proposing to amend the definition of “private labeler” in section 431.2 to reflect that the term applies to all products covered under part 431, and not only to commercial HVAC and WH products, as the definition currently states. Since this term could be applicable to persons who may submit petitions for waivers, or entities potentially affected by waivers issued under section 431.401, this change will ensure that the term is applied uniformly to all products.

To clarify compliance obligations further, DOE proposes to make explicit in sections 430.27(a)(3) and 431.401(a)(3) that, while any person may petition for waiver and interim waiver, the ultimate responsibility for complying with the waiver provisions lies with the manufacturer, which, by statutory definition, includes importers. DOE believes this additional language will make clear that the compliance burden is on the manufacturer, regardless of which entity submits the waiver.

DOE also proposes to restore, with minor amendments, the inadvertently omitted provisions in section 430.27(b)(1). These provisions would set forth information that must be included in a petition for waiver of the applicable test procedure requirements for consumer products. In particular, the provisions require petitioners to: (1) specify the basic model(s) to which the waiver applies; (2) identify other manufacturers of similar products; (3) include any known alternate test procedures of the basic model, with the slight modification that any test procedures identified must be specific to the product type; (4) sign the petition, and (5) include any request for confidential treatment for any information deemed confidential. The reinstatement of these provisions would correct a drafting error and would not impose any new

regulatory requirements on manufacturers, because these provisions had been part of this section prior to their removal.

This document also proposes to amend sections 430.27(b)(1)(i) and 431.401(b)(1)(i) to require waiver applicants to identify each brand name under which the basic model specified in the waiver will be distributed in commerce in the U.S. While this proposed amendment would not prohibit third party representatives such as original equipment manufacturers (“OEMs”) from submitting waiver applications on behalf of an importer, such OEMs would be required to include all brand names and applicable basic model numbers for which the waiver will apply. DOE believes this requirement would assist the Department in identifying the market-based brand name of a basic model addressed by a waiver granted by DOE. This information should be identical to the information submitted in the certification report for a given basic model.

DOE also proposes to amend sections 430.27(c) and 431.401(c) to require petitioners to notify, on publication of the waiver or interim waiver, all other manufacturers that manufacture products in the same product class as the basic models for which the petition for waiver or interim waiver was requested. In addition, if the technology or characteristic at issue in the petition is known by the petitioner to be used in multiple product classes, notification must also be sent to manufacturers of products in those other product classes. In many cases, notification of all manufacturers of the same product type, as set forth in sections 322 and 325 of EPCA, leads to over-notification. Therefore, DOE proposes to limit manufacturer notification to those manufacturers who manufacture products in the same product class as the basic model(s) specified in the waiver petition, as well as in other product classes where the technology or

feature at issue in the waiver is used. In addition, DOE proposes to require notification upon publication of the interim waiver. DOE is proposing this requirement to address manufacturer concerns about being required to notify other manufacturers (who are also likely to be competitors of the petitioner) prior to the marketing of the basic model(s) specified in the petition. Once a manufacturer receives an interim waiver, the basic model(s) covered in the interim waiver may be distributed in commerce, so competitive concerns are less likely to be an issue.

Additionally, DOE proposes to amend sections 430.27(e) and 431.401(e)(1) to state that, if administratively feasible, DOE will notify an applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the petition. While DOE will continue to notify applicants of its decisions on interim waivers as soon as possible, DOE's experience has been that providing a response within 15 business days is often not feasible.

DOE would also amend sections 430.27(h) and 431.401(e)(4) to specify that an interim waiver would expire within 1 year of issuance unless either of the following occurs first: 1) DOE publishes a final decision and order in the Federal Register; or 2) DOE publishes a new or amended test procedure that addresses the issues presented in the waiver, and manufacturers are required to use that test procedure to demonstrate compliance with the applicable standard. This amendment will obviate the need for manufacturers to request an extension of the interim waiver after 180 days, while providing sufficient time for DOE to consider the issues presented in the petition and publish a decision and order or amend the test procedure to eliminate the continued need for the waiver. DOE further proposes to amend the existing 430.27(m) and 431.401(g)

(which would be renumbered as 430.27(p) and 431.401(j)) to provide that, as soon as is practicable after DOE grants a waiver, DOE will publish a proposed rule to amend the relevant test procedure regulation to eliminate the need for the continuation of the waiver. The waiver would then terminate on the date when use of the amended test procedure is required to be used by manufacturers to demonstrate compliance with the applicable energy or water conservation standard. Continuation of the waiver until the date when use of an amended test procedure is required to demonstrate compliance, rather than the effective date of that test procedure (i.e., the date on which that procedure officially becomes part of the Code of Federal Regulations), will prevent situations where a waiver has expired while the test procedure is effective but its use is not yet required. DOE will continue to update its test procedures in a timely manner to address issues presented in petitions for waiver.

DOE notes that the metrics for measuring energy or, where appropriate, water consumption or efficiency are established either by EPCA or in DOE rulemakings to set energy conservation standards for a particular covered product or type of covered equipment. Therefore, while a test procedure waiver or interim waiver can provide an alternate test method for a particular basic model, it is inappropriate for a waiver to provide an alternative metric by which to certify compliance with an applicable standard or make representations as to the energy and water use of that basic model. As a result, DOE proposes to amend sections 430.27(a) and 431.401(a) to clarify that a waiver or interim waiver cannot change the metric by which the energy use or efficiency of a basic model is described.

DOE would also add new sections 430.27(m) and 431.401(g) that would specify how manufacturers would certify basic models identified in a petition for an interim waiver and waiver if the test procedure prescribed in the interim waiver differs from the test procedure prescribed in the subsequent decision and order on the waiver. DOE proposes that a manufacturer who has already certified basic models using the procedure permitted in DOE's grant of an interim test procedure waiver does not need to re-test and re-rate those basic models so long as certain criteria are met. The manufacturer would need to have used that alternative procedure after DOE granted the company's interim waiver request, and changes must not have been made to those basic models that would cause them to use more energy or otherwise be less energy efficient. In addition, when DOE publishes a decision and order on a petition for waiver in the Federal Register, a manufacturer must use the test procedure contained in that decision and order to rate any basic models covered by the decision and order that have not yet been certified to DOE. Finally, the test procedure in a decision and order must be used for all future testing for any basic models covered by the decision and order.

DOE also proposes to add new sections 430.27(n) and 431.401(h) to specify that once DOE has granted a petition for waiver for a product or type of equipment employing a particular technology, other manufacturers of that product or equipment employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the Federal Register, must submit a petition for waiver within 60 days. (Some recent examples of technologies or characteristics for which multiple manufacturers had the same need for a waiver include large-capacity clothes washers, refrigerator-freezers that employ multiple defrost cycles, and dishwashers with a water softener regeneration system.) This

proposal is intended to ensure that all products employing technologies that cannot be tested under DOE's test procedure, or where testing products according to DOE's test procedure would lead to unrepresentative results, are rated in a comparable manner. This change would minimize public confusion regarding manufacturer representations of energy efficiency and would improve DOE's certification procedures for covered products and equipment.

The proposed rule would also add new sections 430.27(o) and 431.401(i) to set forth a process for manufacturers to request rescission or modification of a waiver if they determine that the waiver is no longer needed, or for other appropriate reasons. The provision would set forth the process for DOE to consider and, as appropriate, grant the requested rescission or modification. Subsequent to the effective date of a rescission or modification, the manufacturer would be required to use the applicable DOE test procedure. DOE also proposes to add language that would clarify that DOE may revoke or modify a waiver or interim waiver if it determines that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. Additionally, the proposed rule allows for petitioners to request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition. Notice of any such extension would be published in the Federal Register.

To keep the regulatory text current, DOE is also proposing to remove all references to the "Assistant Secretary for Conservation and Renewable Energy" in 10 CFR 430.27 and the

“Assistant Secretary for Energy Efficiency and Renewable Energy” in 10 CFR 431.401 and replace these terms with “DOE.”

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today’s regulatory action is not a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website, <http://energy.gov/gc/office-general-counsel>.

DOE reviewed the waiver requirements being proposed under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below.

The proposed rule may affect small manufacturers of covered consumer products and commercial equipment. DOE does not, however, expect that the impact of the proposal would be significant. The regulatory provisions proposed would clarify the effect of the waiver (the waiver does not release a manufacturer from complying with the applicable standard and certification requirements) and the responsibility for compliance with the waiver provisions (the manufacturer is responsible for the compliance regardless of who submits the petition). The rule would also specify how manufacturers would certify basic models specified in a petition for an interim waiver and waiver if the test procedure prescribed in the interim waiver differs from the test procedure prescribed in the subsequent decision and order on the waiver. This proposed language clarifies existing regulatory requirements and does not add new regulatory burden. The reinstatement of the provisions of 10 CFR 430.27(b)(1) that were inadvertently removed is also not expected to impose a significant regulatory burden. These provisions require petitioners to: specify the basic model(s) to which the waiver applies, identify other manufacturers of similar products, include any known alternate test procedures of the basic model, sign the petition, and include a request seeking confidential treatment for any information deemed confidential. Manufacturers have already been complying with these requirements since they were enacted on November 26, 1986. 51 FR 42826.

In addition, the new waiver requirements would require petitioners to specify the brand names under which a basic model would be sold and expand the eligibility for waivers to all types of commercial equipment. These requirements are not expected to result in a significant impact, as they are consistent with the purpose of the existing waiver process, which is to assist manufacturers in testing their equipment to demonstrate compliance with DOE standards. The new waiver requirements would also amend the timelines for the issuance of an interim waiver from 15 to 30 days, a provision that manufacturers can account for in their product development and marketing schedule without significant difficulty. The proposed requirements would also extend the time periods covered by an interim waiver or waiver, providing more certainty for manufacturers as they rate, certify and market their products. The new proposal to clarify that DOE would not change the established metric in a test procedure waiver is also not expected to result in a significant impact because the established metric is already required as a result of the applicable energy conservation standard.

DOE also proposes to specify that once DOE has granted a petition for waiver for a product or type of equipment employing a particular technology, other manufacturers of that product or equipment employing a technology or characteristic that results in the same need for a waiver must submit a petition for waiver within 60 days. DOE does not expect this requirement to impose significant additional burden because, given that the products or equipment produced by these manufacturers employ a technology that provides the same function that led DOE to grant a waiver in the first instance, these manufacturers would likely need to petition for waiver under DOE's existing regulations. This provision indicates the timeframe in which this process must be completed.

The proposed rule would also set forth a process for manufacturers to request rescission or modification of a waiver. This provision would allow manufacturers to notify DOE if they believe a previously granted waiver is no longer needed, or that rescission or modification is necessary for other appropriate reasons. The provision then sets forth the process for DOE to consider and, as appropriate, grant the request. The intent of this provision is to reduce manufacturer burden by providing a process for manufacturers to request rescission or modification of a waiver that they believe is inappropriate or unworkable. Similarly, the rule would provide a process by which DOE may revoke or modify a previously granted waiver if DOE determines that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. In such cases, the manufacturer would be required to test its products or equipment using the DOE test procedure. DOE does not believe that this provision would result in a significant impact on small manufacturers. Given that a revocation or modification is only issued if the factual basis underlying the original petition was not correct in the first instance, EPCA would already require the manufacturers to use the applicable DOE test procedure.

For the reasons stated above, DOE certifies that this proposed rule, if adopted, would not result in a significant impact on a substantial number of small entities. Accordingly, DOE has not prepared an initial regulatory flexibility analysis for this rulemaking. DOE will transmit this certification to the Small Business Administration (SBA) as required by 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the submission of a petition for waiver or interim waiver, or a request for rescission, is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue SW., Washington, D.C. 20585-0121 or Amendments-Correction-2012-TP-0003@ee.doe.gov, and by e-mail to OIRA_Submission@omb.eop.gov.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information

subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act

DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

DOE reviewed this proposed rule pursuant to Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined today's proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. See 74 FR 61497. Therefore, DOE has taken no further action in today's proposed rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729 (February 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4; 2 U.S.C. 1501, et seq.) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory

action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at <http://energy.gov/gc/office-general-counsel>.) Today’s proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today’s proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE determined under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), that today’s proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution. See 74 FR 61497-98.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today’s proposed rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply,

distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action, which proposes a correction and minor amendments to the Department's waiver application procedures, is not a significant regulatory action under Executive Order 12866, it would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and, wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) a date upon which such information might lose its confidential nature due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's NOPR.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on November 21, 2012.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE is proposing to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430 -- ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 430.27 is amended by:

- a. Revising the section heading;
- b. Adding introductory text to paragraph (a);
- c. Adding a paragraph (a)(3);
- d. Revising paragraphs (b), (c), (e), (g), (h), (i), (j) and (l);
- e. Redesignating paragraphs (m) and (n) as paragraphs (p) and (q);
- f. Adding paragraphs (m), (n) and (o); and
- g. Revising newly redesignated paragraphs (p) and (q).

The addition and revisions read as follows:

§ 430.27 Petitions for waiver and interim waiver.

(a) This section provides a means for manufacturers of covered products to seek waivers of the test procedure requirements of this subpart for basic models that meet the requirements of paragraph (a)(1) of this section. In granting a waiver or interim waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard or make representations about the

energy use or efficiency of the covered product. The granting of a waiver or interim waiver by DOE requires the use of the specified alternative method for testing the basic models addressed in the waiver, and does not exempt such basic models from any other regulatory requirement contained in this part or the certification and compliance requirements of 10 CFR part 429.

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(3) Manufacturers of basic model(s) covered by a waiver or interim waiver are responsible for complying with the other requirements of this subpart and with the requirements of 10 CFR part 429 regardless of the person that originally submitted the petition for waiver and/or interim waiver.

(b)(1) A petition for waiver shall be submitted either electronically to AS_Waiver_Requests@ee.doe.gov (preferred method of transmission) or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW., Mailstop EE-2J, Washington, DC 20585-0121. Each petition for waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, each brand name under which the identified basic model(s) will be distributed in commerce, design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived and shall discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models distributed in commerce in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics, or water consumption characteristics of the basic model; and

(iv) Be signed by the petitioner or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a petition for waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE shall publish in the Federal Register the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information with respect to the determination of the petition. Any person submitting written comments to DOE with respect to a Petition for Waiver shall also send a copy of such comments to the petitioner. In accordance with paragraph (i) of this section, a petitioner may submit a rebuttal statement to DOE.

(2) A petition for interim waiver shall be submitted either electronically to AS_Waiver_Requests@ee.doe.gov or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW, Mailstop EE-2J, Washington, DC 20585-0121. Each petition for interim waiver shall reference the related petition for waiver by identifying the particular basic model(s) for which a waiver is being sought. Each petition for interim waiver shall demonstrate likely success of the petition for waiver. Each petition for interim waiver shall be signed by the applicant or by an authorized representative.

(c)(1) Each petitioner for interim waiver shall, upon publication of a grant of an interim waiver in the Federal Register, notify in writing all known manufacturers of domestically marketed basic models of the same product class (as specified in 10 CFR 430.32) and of other product classes known to the petitioner to use the technology or have the characteristic at issue in the waiver. The notice shall include a statement that DOE has published the interim waiver and petition for waiver in the Federal Register and the date the petition for waiver was published. The notice must also include a statement that DOE will receive and consider timely written comments on the petition for waiver. Within five working days, each petitioner shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(2) If a petitioner does not request an interim waiver and notification has not been provided pursuant to paragraph (c)(1) \, each petitioner, after filing a petition for waiver with DOE, and after the petition for waiver has been published in the Federal Register, shall, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product class (as listed in 10 CFR 430.32) and of other product classes known to petitioner to use the technology or have the characteristic at issue in the waiver. The notice shall include a statement that DOE has published the petition in the Federal Register and the date the petition for waiver was published. Within five working days of the publication of the petition in the Federal Register, each petitioner shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

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(e) If administratively feasible, a petitioner shall be notified in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the petition. Notice of DOE's determination on the petition for interim waiver shall be published in the Federal Register.

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(g) An interim waiver from the test procedure requirements will be granted by DOE if it appears likely that the petition for waiver will be granted, and/or DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

(h)(1) An interim waiver will terminate one year after publication in the Federal Register unless either of the following occurs first:

- (i) DOE publishes in the Federal Register a determination on the petition for waiver; or
- (ii) DOE publishes in the Federal Register a new or amended test procedure that addresses the issues presented in the waiver, and manufacturers are required to use that test procedure to demonstrate compliance with the applicable standard.

(2) DOE may extend the scope of an interim waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. DOE shall publish any such extension in the Federal Register.

(i) Following publication of the petition for waiver in the Federal Register, a petitioner may, within 10 working days of receipt of a copy of a comment submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to DOE. A petitioner may rebut more than one response in a single rebuttal statement.

(j) The petitioner shall be notified in writing as soon as practicable of the disposition of each petition for waiver. DOE shall issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

* * * * *

(l) Waivers will be granted by DOE if it is determined either that the basic model(s) for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. Waivers may be granted subject to conditions, which may include adherence to alternate test procedures specified by DOE. DOE shall consult with the Federal Trade Commission prior to granting any waiver, and shall promptly publish in the Federal Register notice of each waiver granted or denied, and any limiting conditions of each waiver granted. DOE may extend the scope of a waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. Notification of such extension will be published in the Federal Register.

(m)(1) If the alternate test procedure specified in the interim waiver differs from the alternate test procedure specified by DOE in a subsequent decision and order granting the petition for waiver, a manufacturer who has already certified basic models using the procedure permitted in DOE's grant of an interim test procedure waiver does not need to re-test and re-rate those basic models so long as:

(i) The manufacturer used that alternative procedure to certify the compliance of the basic model after DOE granted the company's interim waiver request;

(ii) Changes have not been made to those basic models that would cause them to use more energy or otherwise be less energy efficient; and

(iii) The manufacturer does not modify the certified rating.

(2) After DOE publishes a decision and order in the Federal Register, a manufacturer must use the test procedure contained in that notice to rate any basic models covered by the waiver that have not yet been certified to DOE and for any future testing in support of the certification for the basic model(s).

(n) Not later than 60 days after DOE grants a petition for waiver for a product employing a particular technology or having a particular characteristic, any manufacturer of that product employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the Federal Register, must submit a petition for waiver pursuant to the requirements of this section. Manufacturers may also submit a request for interim waiver pursuant to the requirements of this section.

(o)(1) Waivers and interim waivers are conditioned upon the validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. DOE will publish any proposed rescission or modification in the Federal Register for public comment. DOE will also publish its decision in the Federal Register.

(2) Petitioners may request that DOE rescind or modify a waiver or interim waiver if the petitioner discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. DOE will publish any request for rescission or modification in the Federal Register for public comment. DOE will also publish its decision on the request in the Federal Register. The decision shall be based on relevant information contained in the record and any comments received. Basic models tested subsequent to the effective date of a rescission must be tested using the applicable DOE test procedure in 10 CFR part 430.

(p) As soon as practicable after the granting of any waiver, DOE will publish in the Federal Register a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the Federal Register a final rule. Such waiver will terminate on the date on which use of the test procedure established in such final rule is required to demonstrate compliance with the applicable conservation standard.

(q) In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C.

PART 431 -- ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291-6317.

4. Section 431.2 is amended by revising the definition of “Private labeler” to read as follows:

§ 431.2 Definitions.

* * * * *

Private labeler means, with respect to any product covered under this part, an owner of a brand or trademark on the label of a covered product which bears a private label. A covered product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

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5. Section 431.401 is amended by:

- a. Revising the section heading;
- b. Adding introductory text to paragraph (a);
- c. Revising paragraph (a)(1);
- d. Adding paragraph (a)(3);

- e. Revising paragraphs (b)(1) introductory text, (b)(1)(i), (b)(2), (c), (d)(2), (e)(1), (e)(3), and (e)(4);
- f. Adding paragraph (e)(5);
- g. Revising paragraphs (f)(1), (f)(2), and (f)(4);
- h. Adding paragraph (f)(5);
- i. Redesignating paragraph (g) as (j);
- j. Adding paragraphs (g), (h), and (i);
- k. Revising newly redesignated paragraph (j); and
- l. Adding a new paragraph (k).

The additions and revisions read as follows:

§ 431.401 Petitions for waiver and interim waiver.

(a) *General criteria.* This section provides a means for manufacturers of covered equipment to seek waivers of the test procedure requirements of this part for basic models that meet the requirements of paragraph (a)(1) of this section. In granting a waiver or interim waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard or make representations about the energy use or efficiency of the covered equipment. The granting of a waiver or interim waiver requires the use of the specified alternative method for testing the basic models addressed in the waiver, and does not exempt such basic models from any other regulatory requirement contained in this part or the certification and compliance requirements of 10 CFR part 429.

(1) Any interested person may submit a petition to waive for a particular basic model the requirements of any uniform test method contained in this part, upon the grounds that either the

basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

* * * * *

(3) Manufacturers of basic model(s) covered by a waiver or interim waiver are responsible for complying with the other requirements of this part and with the requirements of 10 CFR part 429 regardless of the person that originally submitted the petition for waiver and interim waiver.

(b) *Submission, content, and publication.* (1) A petition for waiver shall be submitted either electronically to AS_Waiver_Requests@ee.doe.gov (preferred method of transmission) or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW., Mailstop EE-2J, Washington, DC 20585-0121. Each petition for waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, each brand name under which the identified basic model(s) will be distributed in commerce, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived, and discuss in detail the need for the requested waiver;

* * * * *

(2) Petitions for interim waiver shall be submitted by email to AS_Waiver_Requests@ee.doe.gov or (preferred method of transmission), or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW., Mailstop EE-2J, Washington, DC 20585-0121. Each petition for

interim waiver must reference the petition for waiver by identifying the particular basic model(s) for which a waiver is being sought. Each petition for interim waiver must demonstrate likely success of the petition for waiver and address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the petition for interim waiver. Each petition for interim waiver shall be signed by the petitioner or an authorized representative.

(c) *Notification to other manufacturers.* (1) Each petitioner for interim waiver shall, upon publication of a grant of an interim waiver in the Federal Register, notify in writing all known manufacturers of domestically marketed units of the same equipment class (as set forth in the relevant subpart of 10 CFR part 431), and of other equipment classes known to the petitioner to use the technology or characteristic at issue in the waiver. The notice must include a statement that DOE has published the interim waiver and petition for waiver in the Federal Register and the date the petition for waiver was published. The notice must also include a statement that DOE will receive and consider timely written comments on the petition for interim waiver. Within five working days, each petitioner must file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(2) If a manufacturer does not request an interim waiver and notification has not been provided pursuant to paragraph (1), each petitioner, after filing a petition for waiver with DOE, and after the petition for waiver has been published in the Federal Register, shall, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same equipment class (as listed in the relevant subpart of 10 CFR part 431), and of other product classes known to the petitioner to use the technology or characteristic

at issue in the waiver. The notice shall include a statement that DOE has published in the Federal Register on a certain date the petition for waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Each petitioner shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(d) * * *

(2) Any person submitting written comments to DOE with the respect to a petition for waiver must also send a copy of such comments to the petitioner. In accordance with paragraph (b)(1) of this section, a petitioner may submit a rebuttal statement to DOE.

(e) *Provisions specific to interim waivers — (1) Disposition of application.* If administratively feasible, DOE will notify the applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the application. Notice of DOE's determination on the petition for interim waiver will be published in the Federal Register.

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(3) *Criteria for granting.* DOE will grant an interim waiver from test procedure requirements if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

(4) *Duration.* An interim waiver will terminate one year after publication in the Federal Register unless either of the following occurs first:

(i) DOE publishes in the Federal Register a determination on the petition for waiver; or

(ii) DOE publishes in the Federal Register a new or amended test procedure that addresses the issues presented in the waiver, and manufacturers are required to use that test procedure to demonstrate compliance with the applicable standard.

(5) *Extension to additional basic models.* DOE may extend the scope of an interim waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. Notification of such extension will be published in the Federal Register.

(f) * * *

(1) *Rebuttal by petitioner.* Following publication of the petition for waiver in the Federal Register, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to DOE. A petitioner may rebut more than one response in a single rebuttal statement.

(2) *Disposition of petition.* DOE will notify the petitioner in writing as soon as practicable of the disposition of each petition for waiver. DOE will issue a decision on the petition as soon as is practicable following receipt and review of the petition for waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

* * * * *

(4) *Granting: criteria, conditions, and publication.* DOE will grant a waiver if it determines that either the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. DOE may grant a waiver subject to conditions, which may include adherence to alternate

test procedures. DOE will promptly publish in the Federal Register notice of each waiver granted or denied, and any limiting conditions of each waiver granted. In granting a waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard or make representations about the energy use or efficiency of the covered product.

(5) *Extension to additional basic models.* DOE may extend the scope of a waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. Notification of such extension will be published in the Federal Register.

(g) If the alternate test procedure specified in the interim waiver differs from the alternate test procedure specified by DOE in the subsequent decision and order granting the petition for waiver, a manufacturer who has already certified basic models using the procedure permitted in DOE's grant of an interim test procedure waiver does not need to re-test and re-rate those basic models so long as:

(1) The manufacturer used that alternative procedure after DOE granted the company's interim waiver request; and

(2) Changes have not been made to those basic models that would cause them to use more energy or otherwise be less energy efficient.

(3) After DOE publishes a decision and order in the Federal Register, a manufacturer must use the test procedure contained in that notice to rate any basic models that have not yet been certified to DOE and for any future testing of any basic model(s) covered by the decision and order.

(h) Not later than 60 days after DOE grants a petition for waiver for a type of equipment employing a particular technology or characteristic, any manufacturer of that equipment employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the Federal Register, must submit a petition for waiver pursuant to the requirements of this section. Manufacturers may also submit a request for interim waiver pursuant to the requirements of this section.

(i)(1) Waivers and interim waivers are conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. DOE will publish any proposed rescission or modification in the Federal Register for public comment. DOE will also publish its decision in the Federal Register.

(2) Petitioners may request that DOE rescind or modify a waiver or interim waiver if the petitioner discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. DOE will publish any request for rescission or modification in the Federal Register for public comment. DOE will also publish its decision on the request in the Federal Register. The decision shall be based on relevant information contained in the record and any comments received. Basic models tested subsequent to the effective date of a rescission must be tested using the applicable DOE test procedure.

(j) *Revision of regulation.* As soon as practicable after the granting of any waiver, DOE will publish in the Federal Register a notice of proposed rulemaking to amend its regulations so

as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the Federal Register a final rule. Such waiver will terminate on the date on which use of the test procedure established in such final rule is required to demonstrate compliance with the applicable conservation standard.

(k) In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C.

[FR Doc. 2012-30195 Filed 12/14/2012 at 8:45 am; Publication Date: 12/17/2012]